REMARKS

Claims 1-19 are currently pending and have been examined. Claims 20-28 are canceled without prejudice or disclaimer. Applicants reserve the right to pursue any or all of these canceled claims in one or more divisional applications.

Independent claims 1 and 9 are amended. Support for these amendments can be found throughout the claims and specification as originally filed. For example, support for the amendments to claims 1 and 9 can be found at paragraph **[0096]** and elsewhere throughout the specification as originally filed. Accordingly, the amendments to claims 1 and 9 do not present new matter.

Claims 29-38 are new. Support for each of these new claims can be found throughout the claims and specification as originally filed. For example, support for new claims 29 and 34 can be found at paragraph **[0096]** and elsewhere throughout the specification as filed. Support for new claims 30, 31, 35 and 36 can be found at paragraph **[0097]** and elsewhere throughout the specification as filed. Support for new claims 32, 33, 37 and 38 can be found at paragraph **[0090]**, Figure 4 and Figure 5 and elsewhere throughout the specification as filed. Accordingly, none of claims 29-38 constitute new matter.

Objection to claim 1

The Examiner objects to claim 1 as allegedly containing a grammatical error. In particular, the Examiner points out that claim 1 contains the phrase "a reagents." Applicants have amended claim 1 to now recite "a reagent." Accordingly, Applicants respectfully request that the Examiner withdraw the objection to claim 1.

Rejection of claims 1-10 and 13-19 under 35 U.S.C. § 103(a)

The Examiner rejects claims 1-10 and 13-19 under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 6,083,763 (Balch) in view of U.S. Patent No. 6,485,913 (Becker et al.). With respect to independent claim 1, the Examiner asserts that Balch discloses all of the elements of this claim other than "a program that can correspond the function of the dispensing with the progress of the reaction in each well." The Examiner, however, asserts that this deficiency is remedied by Becker et al., who allegedly disclose an oligonucleotide synthesizer

having, among other things, a dispensing system and "a program that synchronizes the functions of the dispensing system with the progress of the reaction in each well." The Examiner then contends that a skilled artisan would have combined the program allegedly disclosed by Becker et al. with the instrument allegedly disclosed by Balch in order to optimize the system.

With respect to independent claim 9, the Examiner acknowledges that Balch does not disclose a liquid removal device, but asserts that such a device is disclosed by Becker et al. The Examiner then asserts, without explanation, that a skilled artisan would find it obvious to "provide the system disclosed by Balch with a device that can remove fluids from the wells of a microplate."

Finally, with respect to dependent claims 4 and 10, the Examiner acknowledges that Balch does not disclose systems having LEDs (claim 4) or having the capability to write data to a storage location (claim 10). However, the Examiner asserts that Becker et al. disclose the use of LEDs and that writing data to a storage location is well known in the art. The Examiner contends that a skilled artisan would combine LEDs with the disclosure of Balch "since diodes are much cheaper than a laser" and that the artisan would include the capability to write data to a storage location because "it is well known in the art that computers are capable of saving data to a storage device."

Applicants maintain that claims 1-10 and 13-19 are not obvious under 35 U.S.C. § 103(a) over Balch in view of Becker et al. In particular, none or Balch, Becker et al. or the combination thereof disclose an analyzer program that determines whether a reaction step has failed and a dispensing device configured to stop reagent delivery to one or more failed reactions. The only reference in Balch is to CCD imaging system software that processes information for probe/target binding areas in hybridization assays (see Balch at column 6, lines 25-34). Becker et al. disclose a single dispenser that is configured to dispense liquid when a reaction has been completed (see Becker et al., at column 27, lines 1-13). In particular, Becker et al. state the following:

> Furthermore, since the signal obtained using a CCD detector is received in real time, the signal can be used as an indication of the extent of a reaction, and can be interfaced with the liquid dispensing system to cause an amount of a liquid to be dispensed, for example, to terminate the reaction, or to change the conditions of

the reaction such that a second reaction can be performed at the particular target site.

Becker et al., column 27, lines 1-13.

Independent claims 1 and 9 are clearly distinguishable from the combination of Balch and Becker et al. because the dispensing device recited in these claims is configured to "discontinue reagent delivery to one or more wells where failure is indicated while maintaining reagent delivery to wells where failure is not indicated." Nothing in Balch or Becker et al. teach or suggest discontinuing reagent delivery to one or more wells in response to an indication of reaction failure. Accordingly, the combination of Balch and Becker et al. fail to teach all of the elements of the independent claims 1 and 9 as well as the claims dependent thereon.

In addition to the foregoing, Becker et al. teach away from discontinuing reagent delivery in response to indication of reaction failure. In particular, Becker et al. disclose that the dispenser system should be configured to add liquid in response to reaction monitoring. A complete reading of Becker et al. shows that the system described therein is used to add liquid to maintain constant reaction volume in small scale reactions where the effects of evaporation are significant. As such, the system of Becker et al. is configured to respond to system events by dispensing liquids rather than withholding them. This is in direct opposition to the language recited in the independent claims of the instant application. Accordingly, Applicants respectfully submit, that a skilled artisan would not combine the disclosure of Balch with that of Becker et al.

In view of the foregoing remarks, Applicants respectfully request that the Examiner withdraw the rejection of claims 1-10 and 13-19 under 35 U.S.C. § 103(a).

Rejection of claims 11 and 12 under 35 U.S.C. § 103(a)

The Examiner rejects claims 11 and 12 under 35 U.S.C. § 103(a) as allegedly obvious over Balch in view of Becker et al. and further in view of U.S. Patent Application Publication No. 2003/0207441 (Eyster et al.) (claim 11) or Balch in view of Becker et al. and further in view of U.S. Patent No. 5,639,603 (Dower et al.) (claim 12). The Examiner acknowledges that neither Balch nor Becker et al. disclose a computer configured to generate a warning message as recited in claim 11 or a liquid removal device comprising a centrifuge as recited in claim 12. The

Examiner, however, asserts that these missing elements are disclosed by Eyster et al. and Dower et al., respectively. The Examiner then contends that a skilled artisan would have combined the disclosures of Balch, Becker et al. and Eyster et al. to arrive at the subject matter recited in claim 11 and the disclosures of Balch, Becker et al. and Dower et al. to arrive at the subject matter recited in claim 12.

Applicants submit that claims 11 and 12 are not obvious under 35 U.S.C. § 103(a). As discussed above, the combination of Balch and Becker et al. do not disclose all of the elements of independent claim 9, from which claims 11 and 12 depend. Neither Eyster et al. nor Dower et al. remedy this deficiency. As further discussed above, a skilled artisan would not combine the disclosure of Balch with that of Becker et al. Neither Eyster et al. nor Dower et al. remedy this deficiency. As such, neither claim 11 nor 12 are obvious over of any of the above-recited combinations of references.

In view of the foregoing remarks, Applicants respectfully request that the Examiner withdraw the rejection of claims 11 and 12 under 35 U.S.C. § 103(a).

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

Applicants believe that all outstanding issues in this case have been resolved and that the present claims are in condition for allowance. Nevertheless, if any undeveloped issues remain or

if any issues require clarification, the Examiner is invited to contact the undersigned at the telephone number provided below in order to expedite the resolution of such issues.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 11, 2008

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